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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/530,803	06/12/2000	HERVE CROZIER	365-444P	3623

2292 7590 05/14/2003

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EXAMINER

LEE, RIP A

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 05/14/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/530,803

Applicant(s)

CROZIER, HERVE

Examiner

Rip A. Lee

Art Unit

1713

--The MAILING DATE of this communication appears on the cover sheet with the correspondenc address --

THE REPLY FILED 06 May 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☒ The proposed amendment(s) will not be entered because:  
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-15

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☒ Other: see attachment to advisory action

***Attachment to Advisory Action***

This attachment to an advisory action follows an after-final response filed on May 6, 2003. Entry of amended claims 1, 10, 11, 14, and 15 was solicited. Claim 6 was canceled. The amendment fails to place the application in condition for allowance for the reasons furnished below. Therefore, the amendment will not be entered at this time.

1. The Applicants traverse the rejection of claims 1-15 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,551,501 to Shiga *et al.* in view of Watanabe *et al.*

The Applicants contend that the nucleating agent in both references is incorporated to the base polymer by simple blending. This is in contrast with the present claims in which the propylene polymer is "polymerized in the presence of a catalyst modified with a polymer containing vinyl compound units."

The compositions of Watanabe *et al.*, indeed, contain a based polymer in which a compound containing vinyl compound units is incorporated into the polymer additive by simple blending, much like conventional nucleating agents. However, Shiga *et al.* teach a different process. As indicated in the previous office action, a Ti/Et<sub>3</sub>Al catalyst is treated with vinyl cyclohexane for 15 minutes, during which time, polymerization of the monomer occurs. This results in the formation of poly(vinyl cyclohexane) containing the active catalyst (see Example 1). As such, propylene in Shiga *et al.* is polymerized in the presence of a catalyst modified with a polymer containing vinyl units, as presently claimed.

The Applicants further indicate that Watanabe *et al.* state that coloring agents in amounts greater than 1 wt % impair the polymer properties. By doing so, the reference allegedly teaches away from the instant invention in which higher amounts of pigments, *i.e.*, up to 5 wt % is used. A declaration submitted under 37 C.F.R. 1.132 illustrates use of up to 5 wt % pigment without impairing polymer properties.

While the experiments furnished by the Applicants are thorough and illustrate their invention adequately, they do not detract from the fact that the range of 0.01-1.0 wt %, described in Watanabe *et al.* lies squarely within the range set forth in the present claims. Claims to a range of 0.01-5 wt % are not restricted to an upper range of 1-5 wt % nor do they exclude a lower range of 0.01-1 wt %.

Shiga *et al.* teaches a process for producing nucleated polypropylene which is essentially the same as that described presently. And although the inventors contemplate use of pigment, the amount is not disclosed. It is maintained that the skilled artisan, upon reading both references, would find it obvious to use the amount of pigment disclosed in Watanabe *et al.* in the compositions of Shiga *et al.*, and that one would find it obvious to combine references because both relate to colored, nucleated polypropylene compositions.

In view of the discussion above, the rejection of record has not been withdrawn.

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2. The rejection under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,684,099 to Watanabe *et al.* applies only to claims 1-5 and 7-15. As elucidated by Applicants in the after-final response, the subject matter of claim 6 is not taught by the prior art. Thus, the rejection of claim 6 using this reference no longer applies.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rip A. Lee whose telephone number is (703)306-0094. The examiner can be reached on Monday through Friday from 9:00 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached at (703)308-2450. The fax phone number for the organization where this application or proceeding is assigned is (703)746-7064. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

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May 12, 2003



DAVID W. WU  
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